

EXHIBIT A

LG Philips LCD Co., LTD v.
Tatung Company, et al.

Hearing
February 8, 2006

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE
LG PHILIPS LCD CO LTD, :
Plaintiff, :
: Civil Action
: No. 05-292
v :
TATUNG COMPANY, TATUNG COMPANY OF:
AMERICA, INC., CHUNGHWA PICTURE:
TUBES LTD., and VIEWSONIC:
CORPORATION, :
Defendants :
Wednesday, February 8, 2006
12:30 p.m.
Courtroom 4B
844 King Street
Wilmington, Delaware
BEFORE: THE HONORABLE JOSEPH J FARNAN, JR
United States District Court Judge
APPEARANCES:
THE BAYARD FIRM
BY: RICHARD D KIRK, ESQ
-and-
McKENNA LONG & ALDRIDGE
BY: GASPARIE J BONO, ESQ
BY: CASS W. CHRISTENSON, ESQ
Counsel for the Plaintiff
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APPEARANCES CONTINUED:
RICHARDS, LAYTON & FINGER
BY: MATTHEW W KING, ESQ
-and-
HOWREY, LLP
BY: JULIE S GABLER, ESQ
BY: J JAMES LI, ESQ
Counsel for the Defendant
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[1] THE COURT: All right. Be seated, [2] please. You can step up.

[3] Okay. Do you want to announce [4] your appearance so the court reporter can get [5] them down.

[6] MR. KIRK: Good afternoon, Your [7] Honor. Richard Kirk from The Bayard Firm for [8] the plaintiff, LG. Philips LCD Company, Limited.

[9] With me today from the firm of [10] McKenna, Long & Aldridge in Washington are [11] Gaspare Bono and Cass Christenson.

[12] THE COURT: Good afternoon.

[13] MR. KING: Good afternoon, Your [14] Honor. Matt King with Richards, Layton & Finger [15] on behalf of the defendants. With me here today [16] from the Howrey firm are Julie Gabler and James [17] Li.

[18] THE COURT: Good afternoon.

[19] MR. KING: Your Honor, [20] unfortunately Christine Dudsac who is —

[21] THE COURT: I heard. Do you see [22] this thing over here, we don't have it working [23] correctly, I think partially because of the [24] white noise thing they installed, so I

[1] apologize, we can't really do it well. [2] Hopefully we'll be technologically advanced in [3] about another sixty days.

[4] MS. GABLER: We should be fine. [5] And Christine obviously apologizes. There was [6] that issue with the UPS fire

at the Philadelphia [7] Airport this morning that caused her to be [8] unable to come in.

[9] THE COURT: I was reading that [10] during my trial on the AOL news, they showed a [11] picture of the fire of the cargo plane, right?

[12] MS. GABLER: Yes.

[13] THE COURT: It was amazing. Thank [14] you and welcome and thank you, Mr. King.

[15] All right. I took a look at your [16] letters and just a couple of notes that I made [17] that I thought if I address might be helpful. [18] The first item is that we have a July 17, 2006 [19] trial date, and which we will not lose or pass [20] or modify, or extend, shorten, it's July 17.

[21] If you look at the calendar, I [22] don't know if you're allowed to see those [23] anymore, but there is another bench trial [24] scheduled, but don't pay attention to that

[1] because that's going to go later or earlier or [2] away, so you are the only trial in July, whether [3] it's a bench trial, a jury trial, it really [4] doesn't matter to me.

[5] So that brings me to my concern, [6] which I see that you have gotten a lot of the [7] matters resolved, but as is typical in these [8] type of cases, there is a little bit of tension [9] not between you, but with the kind of work you [10] have to get accomplished in the time frame, so [11] it looks to me like we've missed the early [12] February — what was it, February 3rd?

[13] MS. GABLER: Yes.

[14] THE COURT: To complete document [15] production, which is not a good thing in my [16] world.

[17] MS. GABLER: The defendants have [18] met the date, Your Honor. We completed our [19] production on Friday.

[20] THE COURT: Right. But if we all [21] don't meet it —

[22] MS. GABLER: Right, then we all [23] have a problem, yes.

[24] THE COURT: Exactly, we all have a

[1] problem. So the first thing I want to address [2] is when you have a July 17th trial date, and I [3] understand all the translation issues and the [4] review issues and that we have to get, before we [5] go any further, all document production [6] resolved. And I know there is some implications [7] of interrogatory answers as it may pertain to, [8] you know, hopefully scheduled depositions, but [9] we really gotta find out what is the drop dead [10] date because in this case with that July 17th [11] date, any doc-

ument found that should have been [12] produced is going to cost a lot of money for the [13] party that finds it. And any document that goes [14] against the party, any document found that helps [15] a party won't help you once we get by the drop [16] dead date. So this is an important matter which [17] I guess I need to hear from plaintiff on.

[18] MR. BONO: Yes, Your Honor.

[19] THE COURT: You can do it from [20] there.

[21] MR. BONO: Very well, Your Honor.

[22] We appreciate the significance of the timing [23] here and we have worked very, very hard to try [24] to meet — I would like to meet the deadline. I

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[1] would like to say — we don't believe the [2] defendants have completed their document [3] production. We have done an initial review and [4] there are some items that appear to be deficient [5] which we would like to raise with the Court, so [6] although they did make a fairly large production [7] on Friday, we don't believe it is complete, [8] either.

[9] From our point of view, Your [10] Honor, I would propose the following to see if [11] this is acceptable to the Court. We are in the [12] process of finishing up our document review and [13] getting some few remaining documents, because we [14] have had several discussions with the other side [15] on trying to work out some issues.

[16] We will be prepared to produce [17] additional documents this Friday. We anticipate [18] being — producing some additional documents on [19] Monday, and we believe we can complete our [20] document production one week from today, next [21] Wednesday.

[22] And as I said, there are some [23] other issues with the defendants' production [24] which I believe they're going to -- which I

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[1] would like to raise and I believe they're going [2] to need a little bit of time to go back and look [3] at that as well, so we believe we can complete [4] our production by I guess —

[5] THE COURT: So our date is [6] February 15?

[7] MR. BONO: Yes, Your Honor, if [8] that's all right with the Court.

[9] THE COURT: You know, I take the [10] view, my life isn't that stressful, believe it [11] or not. I mean, there is a lot of work here, [12] managing 300 and some cases, but I always feel [13] empathy for lawyers. So, you know, if you told [14] me February 22nd was your date, as long as it's [15] the date that you're going to drop dead on

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[16] document production and you understand all the [17] consequences on both sides, that's okay.

[18] So you feel real comfortable with [19] February 15th, and I tell you what we are going [20] to do with your concern about their deficient [21] production.

[22] **MR. BONO:** I would feel more [23] comfortable with next Friday, but I think I can [24] meet Wednesday.

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[1] **THE COURT:** We'll make it next [2] Friday. Actually you know what we'll do, we'll [3] give you a weekend to have all those associates [4] in there billing. This is like the bane of [5] their existence, and the thrill of partners [6] existence, Mr. King understands, all that extra [7] cash coming in. It's great, isn't it? So we'll [8] do so we got Wednesday the 15th, so we have [9] Thursday the 16th, 17th, 18th, the 20th is a [10] federal holiday, so we'll give you that, so they [11] can bill double time if they do that, and we'll [12] make it the 21st of February.

[13] **MR. BONO:** Your Honor, I [14] appreciate the extra time from the Court. I [15] don't think that should affect — if the [16] defendants are going to talk about —

[17] **THE COURT:** Hold on a second, I [18] want to get to that problem. I'm going to get [19] you to yelling at each other after February [20] 21st. In other words, you're going to cleanse [21] your soles by February 21st of all that you [22] think you should have produced, you're going to [23] write all those neat letters back and forth [24] about you didn't do this, you didn't do that,

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[1] we're not happy with that, then I'm going to see [2] you within a week of February 21st about [3] deficiencies.

[4] **MR. BONO:** That's very well, but [5] Your Honor, before we pick that date, I'm happy [6] with that, I don't want that to be — for the [7] defendants to bootstrap that into an excuse to [8] delay depositions.

[9] **THE COURT:** Well, it is. They've [10] already gotten that by having to get beyond [11] February 3rd or 2nd or whatever.

[12] **MR. BONO:** Your Honor, but in the [13] proposals we've exchanged proposed deposition [14] schedules among the parties.

[15] **THE COURT:** Well, if you agree.

[16] **MR. BONO:** I just want to say —

[17] **THE COURT:** It's okay.

[18] **MR. BONO:** — the way the [19] proposals — we have to have a conference call [20] tomorrow to firm up the schedule, but the [21] proposed dates are we

have offered our witnesses [22] starting March 8th, okay, March 8th, our [23] 30(b)(6) witnesses, and we have a couple of fact [24] witnesses that will also be scheduled right

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[1] around that time.

[2] They have proposed that we can [3] start taking Tatung Company of America and [4] Viewsonic, which are the U.S. companies which [5] are going to have minimal technical information, [6] they're really only going to have some product [7] information, some sales information, and they [8] have proposed that those depositions start [9] during the weeks of February 21 and 28.

[10] And what I'm suggesting is the [11] completion of our document production which [12] really, really should not affect the scheduling [13] of the beginning of those depositions in those [14] weeks because they're basically U.S. and sales [15] companies.

[16] **THE COURT:** See, you're making it [17] too complicated for kind of an intellectual [18] deficient person like myself. Let me make it [19] clear to you, I don't care, so start taking [20] depositions as long as you all agree. But if [21] somebody objects, then the way my world works [22] since I manage the case attempting to make your [23] lives less stressful, you got to get beyond the [24] document production problems and then you can

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[1] have at each other on depositions because what I [2] don't want to hear is in April or May that we [3] got to go back and depose somebody because this [4] just happened or that just happened because in [5] my world, that doesn't happen. In my world, [6] February 21 is when all documents should be [7] produced.

[8] I'm going to give you an [9] expeditious come back to Court, tell me your [10] problems about deficiencies, put everything on a [11] short leash for the further production or the [12] representation that there is no further [13] production, and typically in my world [14] depositions would begin.

[15] If you can get them to agree to [16] start the week of the 28th, that's fine, but if [17] I'm asked to delay depositions because the [18] document production isn't complete, then I do [19] it. Because the way I order things if you don't [20] have all your documents and the drop dead date [21] and all the disputes resolved, how can you go to [22] depositions? I don't know, but sometimes you [23] can.

[24] If you can agree to do that, go

[1] ahead and go. But if you can't agree to do [2] that, then it stops. But it doesn't get pushed [3] out until April, it gets pushed out from [4] February 28th to what's it, March 2nd or [5] something.

[6] **MR. BONO:** I appreciate Your [7] Honor, under the Court's — I don't want to make [8] it —

[9] **THE COURT:** Stressful.

[10] **MR. BONO:** Under the Court's [11] current scheduling order, we have agreed and the [12] Court endorsed it that we would complete [13] 30(b)(6) depositions and fact depositions by [14] March 17th. And so —

[15] **THE COURT:** I don't mean to [16] interrupt you, but just let me ask this [17] question: What else did you agree to? February [18] 3rd was document production.

[19] **MR. BONO:** Your Honor, I [20] appreciate that.

[21] **THE COURT:** Okay.

[22] **MR. BONO:** If we could work out a [23] situation where that date moves back a week, I'm [24] not arguing about that.

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[1] **THE COURT:** I know you're not.

[2] **MR. BONO:** I really —

[3] **THE COURT:** I just —

[4] **MR. BONO:** I'll be happy to work [5] it out.

[6] **THE COURT:** I just keep trying to [7] bring it back to how I view things. If there is [8] disputes and I have to work them out, because [9] that's the only way I can be consistently — I [10] hate the word — fair, but consistent, let's [11] just say even if I'm unfair, at least I'm [12] consistent, the only way I can do that is if I [13] have a perspective that certain things close, [14] other things begin, unless the parties agree.

[15] But see, you already have gone [16] past, not you personally, if they're deficient, [17] they have gone by it, too, you all have gone by [18] February 3rd, so ultimately you have gone past [19] my world dates.

[20] **MR. BONO:** I understand, Your [21] Honor.

[22] **THE COURT:** Okay.

[23] **MR. BONO:** I understand, and I'll [24] try to work it out with the other side.

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[1] **THE COURT:** So you may go by March [2] 17th.

[3] **MR. BONO:** Very well, I don't have [4] an issue with that per se in working this out.

[5] **THE COURT:** Okay. Or you can [6] agree.

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[7] **MS. GABLER:** Your Honor, we would [8] prefer to hold the depositions schedule, we did [9] exchange dates.

[10] **THE COURT:** So you ought to be [11] able to make it.

[12] **MS. GABLER:** Counsel was correct, [13] that was in the process of moving it forward, [14] but it's definitely our position that we want [15] the document issues resolved before we proceed [16] with depositions.

[17] **THE COURT:** So the date is [18] February 21st, a Tuesday, by five o'clock, [19] Wilmington, Delaware time when everything has to [20] be produced, which means that if there is [21] deficiencies — and these are all documents in [22] the case; right?

[23] **MS. GABLER:** Yes. Can I flag one [24] issue in this area, Your Honor, before we go on?

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[1] **THE COURT:** Sure.

[2] **MS. GABLER:** It's maybe a point of [3] clarification with counsel. I know you are [4] translating documents right now to determine [5] whether or not certain things are relevant and [6] will be produced, but you intend to produce them [7] as foreign language documents; is that correct?

[8] **MR. BONO:** Yes.

[9] **MS. GABLER:** Yes. Okay. So our [10] concern is that if their production is [11] continuing through the 21st, and I have asked [12] Mr. Bono to estimate how many pages or boxes of [13] documents he anticipates adding to his [14] production, currently it's about one-third of a [15] box which they produced, and he told me it was [16] closer to one box than ten boxes and was unable [17] to estimate beyond that, and has represented [18] that a substantial portion of these documents [19] are going to be foreign language documents, so [20] if that, in fact, is the case, we are going to [21] need more than seven or ten days to figure out [22] what we have to know if we have a dispute about [23] what's in their production.

[24] They have the bulk of our

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[1] documents now and to the extent that they think [2] there are deficiencies, whatever additional [3] production we're making would be very small, so [4] basically they have this whole time period to [5] figure out if they have got issues with things [6] that we produced as foreign language documents, [7] but if we're now in a situation where we're only [8] going to have seven days to figure out what's in [9] possibly up to ten boxes of foreign language [10] documents, we're probably not going to be able [11] to

identify disputes by the 28th.

[12] **MR. BONO:** Your Honor, my best [13] estimate at this point is we're talking about a [14] box to a box-and-a-half, not ten boxes.

[15] **THE COURT:** In Korean?

[16] **MR. BONO:** I would say probably [17] three quarters of a box to a box would be in [18] Korean, yes. That's my best estimate at this [19] point.

[20] **THE COURT:** Three quarters of a [21] box ought to be able to be translated in a week. [22] I have had cases where you had German and [23] Japanese.

[24] **MS. GABLER:** Right.

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[1] **THE COURT:** Actually answering [2] documents and they were able to do it.

[3] **MR. BONO:** Just so we know, I'm [4] not going to hold off the rest of the production [5] until the 21st, as soon as documents —

[6] **THE COURT:** As soon as you have [7] them you are going to produce them, you have a [8] drop dead date of the 21st.

[9] **MR. BONO:** I'm going to produce [10] some of these on a rolling basis as soon as [11] they're ready to be produced, so it will be not [12] be at the 21st when you get all these documents.

[13] **MS. GABLER:** Well, assuming that [14] that representation holds true and we receive [15] the bulk of them or all of them by the 15th, [16] we're obviously much more likely by the 28th to [17] have gotten them all translated and then [18] reviewed them to know if we have a dispute.

[19] **THE COURT:** You have to hire more [20] people. I mean, I hate to say that, but if I [21] assume you're already set up for the [22] translation?

[23] **MS. GABLER:** Yes, we do have an [24] firm, an outside firm.

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[1] **THE COURT:** This is just great for [2] the economy.

[3] **MS. GABLER:** It is. Isn't it [4] fabulous?

[5] **THE COURT:** I feel like —

[6] **MS. GABLER:** All of us who didn't [7] learn our parents' native languages are [8] regretting it now.

[9] **THE COURT:** That's fantastic. I'm [10] trying to learn my thousand words in Italian and [11] my mother and grandmother spoke Italian in the [12] house except when we were present. Isn't that [13] something? What were they thinking.

[14] But anyway, you're going to file [15] your deficiency letters against each other on [16] the 28th and I'm going to see you on the 1st of [17] March, which is a

Wednesday, at 12:30.

[18] Actually, you know what I'll do? [19] I'm in a trial, I'll make it for 12:30. There [20] might be some minor adjustment based on the [21] nature of that trial, but we'll schedule for [22] March the 1st at 12:30 to get your answers on [23] your disputes that will be filed by the close of [24] business on the 28th.

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[1] **MS. GABLER:** Your Honor, can we [2] ask for another question?

[3] **THE COURT:** Sure.

[4] **MS. GABLER:** There are some [5] third-party subpoenas that have been issued and [6] those productions are pending and for the ones [7] we issued, we're pretty optimistic we are going [8] to get those documents in by the end of February [9] and will produce them. Is that February 21st [10] date going to be considered the drop dead as [11] applied to third parties, also?

[12] **THE COURT:** All the documents in [13] this case, all the documents in the case are [14] going to be here by February 21st or they're not [15] in the case.

[16] **MS. GABLER:** Okay.

[17] **THE COURT:** You know, as lawyers, [18] that whole third-party subpoena thing is a real [19] problem for judges to manage. So I have decided [20] over the last year to just make it part of [21] document production. If you don't get it, you [22] don't get it. Cases are finite pieces of [23] litigation for parties and they ought to be [24] cutoff dates. I mean, I'm sure if we allowed

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[1] discovery for ten years, there is something out [2] there that we would be able to find.

[3] **MS. GABLER:** No problem, I just [4] wanted to make sure that we were clear.

[5] **THE COURT:** We are all clear. Any [6] document that's in this case is the 21st.

[7] **MS. GABLER:** Okay.

[8] **THE COURT:** Nothing will be in [9] this case after that. So with all that notice [10] and warning and all the understanding no matter [11] how prejudicial, how beneficial, they just won't [12] be in the case. Everybody should be fully [13] alert.

[14] Now, so when I looked at that, I [15] said if we don't have document production, these [16] other matters, and a lot of what was in issue [17] had to do with that, the deposition matters I'm [18] just not going to take up yet. I'm just not [19] going to address them because I'm not through [20] the other part.

[21] There are the interrogatories and [22] answers issue. One of the disputes are [23] interrogatories okay, I guess in the

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first [24] instance over a 30(b)(6) response. You know,

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[1] again, in my world, yes, except if they're [2] inadequate.

[3] **MR. BONO:** Your Honor, let me [4] address that because that was a proposal made by [5] the defendants and as I indicated in the letter [6] to the Court, we would find that amenable and we [7] would agree because they have outlined certain [8] issues, they call contingent issues on the [9] issues of infringement, validity, [10] enforceability, prior art, the defendants have [11] taken the position that they believe they have [12] answered that by way of interrogatory and [13] therefore it should be off limits for 30(b)(6) [14] witnesses. I don't have a problem with that. [15] And we would agree to supplement our [16] interrogatory answers as long as the agreement [17] goes both ways.

[18] **THE COURT:** See, you have just hit [19] on it. That is the problem, they are able to be [20] supplemented. If you cut off that — if you cut [21] off interrogatories and their answers from [22] exposure to deposition, then you are left with [23] the remedy of supplementation. [24] Now, if you both agree to that and

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[1] you're never going to come back to me, I'll go [2] along with that, but again, in my view, my [3] world, I have to cut off the management problem [4] of supplements, case management problem of [5] supplements. But if you agree to it, that's [6] okay with me.

[7] **MS. GABLER:** Our problem now, Your [8] Honor, is that defendants have provided their [9] contingents and prior art references, et cetera, [10] and plaintiff has not, and has not identified [11] which claims are going to be in dispute, has not [12] identified anything about what their disputed [13] terms are, which claims they're asserting, which [14] they're not, they still have not identified any [15] products other than the two listed in the [16] complaint that they even are contending —

[17] **THE COURT:** But they're saying [18] they're willing to do that; right?

[19] **MR. BONO:** Your Honor, now counsel [20] has gone on to a related — it's a little [21] different. I guess the initial proposal by the [22] defendants was as far as presenting each side's [23] contentions and positions with respect to these, [24] the issues of infringement, enforceability,

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[1] validity and prior art, they said we can't — [2] they have given us their

interrogatory answers [3] and they object to us taking 30(b)(6) witnesses [4] on those topics.

[5] And in order to try to cooperate [6] and move this case along, streamline [7] depositions, we are amenable to supplementing [8] our interrogatory answers because we had for the [9] most part objected to that, but we will give you [10] our positions and our contentions on those [11] topics like the defendants have done, we will do [12] it in interrogatory answers and then those [13] subjects will be off limits for 30(b)(6) [14] witnesses, because — and if that applies both [15] directions, we're happy to do that.

[16] **MS. GABLER:** I think as long as [17] we're talking about 30(b)(6) witnesses, yes, I [18] believe the parties are willing to do that, [19] although we are concerned about imposing a time [20] limit.

[21] **THE COURT:** Contention [22] interrogatories are party related, so obviously [23] they would be covered by 30(b)(6). Now, if [24] you're saying is we would like to ask individual

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[1] witnesses about parties answers to contention [2] interrogatories, that's where you might have a [3] problem.

[4] **MR. BONO:** Yes, Your Honor.

[5] **THE COURT:** So you can't do that.

[6] **MS. GABLER:** I would say there is [7] a category of questions that depending on how [8] we're talking about contentions and prior art, [9] for example, the inventors are all witnesses on [10] their side.

[11] **THE COURT:** You don't ask them [12] about the interrogatory answer, you can ask them [13] about prior art.

[14] **MS. GABLER:** But things that might [15] be part of the content of the interrogatory [16] answer, we wouldn't be asking them as phrased, [17] but if there is prior art in there.

[18] **THE COURT:** If they give you [19] twenty pieces of prior art, you can ask them [20] about prior art, but you can't ask them about [21] the party's answer to the interrogatories and [22] that's what you understand and that's what [23] you're concerned about.

[24] **MR. BONO:** Exactly.

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[1] **THE COURT:** I think you have it [2] right, plaintiff has it right, that if it's [3] interrogatories to a party for their [4] contentions, you get them, but you can't examine [5] an individual witness. And you have given up [6] the one area you can do it in, the 30(b)(6) [7] area, because that's the party representative, [8] you have put that all over into interrogatories. [9] Now you'll have individual witnesses in and you [10] can ask them

questions about the subject matter, [11] but not about the specific interrogatory [12] responses.

[13] **MS. GABLER:** I don't think there [14] is any disagreement with that. There is one [15] other issue, though, with the interrogatories, [16] and that's in many of our interrogatories are [17] styled as what they knew at the time they filed [18] the complaint and, therefore, they have a Rule [19] 11 aspect to them.

[20] **THE COURT:** Is that still in [21] existence? There is a Rule 11? Come on.

[22] **MS. GABLER:** There is a Rule 11.

[23] **THE COURT:** Did you find that? [24] Who did that research? There is somebody that's

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[1] awfully good at your firm.

[2] **MS. GABLER:** Yes, there you go.

[3] **THE COURT:** I have been here [4] twenty-one years. I don't remember a Rule 11. [5] I mean, people talked about it years ago. Have [6] you ever been in a case where it actually [7] happened?

[8] **MS. GABLER:** No, I have not.

[9] **THE COURT:** There you go. So [10] don't worry about those implications, just get [11] the information so we can get to the trial with [12] the jury. That's the fun of this profession. [13] Have you heard of one?

[14] **MR. LI:** Yes, we have a claim [15] regarding an exceptional case, but that's [16] exceptional cases.

[17] **THE COURT:** I have heard [18] exceptional cases, but the Third Circuit doesn't [19] really look at it like everybody else in the [20] world does, but Rule 11 implications, don't [21] worry about those, because that's amazing that [22] rule is still there. Do you remember when that [23] was the hottest thing in the legal community? [24] What was it, about a decade ago?

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[1] **MR. BONO:** Two decades ago.

[2] **THE COURT:** That long ago? They [3] actually had us do reports on how many we did [4] and it got so embarrassing because there were [5] none to report that nobody knew what to do, so I [6] thought the rule went away, it floated off into [7] law school library lore or something. But [8] exceptional case, different story, facts on [9] that, that's the kind of information, but Rule [10] 11, don't be too concerned about that.

[11] The rule I found that's good is a [12] motion for a new trial in patent cases when you [13] don't pay attention to the orders of the Court [14] or you have a bad case to begin with and then [15] you try to play around with it at trial, give a [16] new

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trial and assessing all the costs against [17] the losing party, that motion, that's a great [18] rule, very, very forceful.

[19] So you both understand what your [20] doing with that, and that's what you wanted to [21] get to, so you have a common understanding. [22] It's on the record, I understand it, everybody [23] here today understands it, and I think we can [24] move forward using interrogatory technique.

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[1] Depositions, I'm not going to [2] discuss that because I'm not ready to.

[3] **MS. GABLER:** Can we get a date on [4] the interrogatories?

[5] **THE COURT:** Well, I assume you [6] would need it before you started depositions, so [7] I would assume it's going to be sometime around [8] the 21st of February to the 28th.

[9] **MR. BONO:** The 28th would be fine, [10] Your Honor.

[11] **THE COURT:** 28th. Because you'll [12] need them to be able to conduct your [13] depositions, so we'll make February 28th the [14] drop dead date on interrogatories.

[15] I gave you a date to come here, [16] March 1st. You don't have to use that if you [17] can work things out.

[18] Privilege, in this document [19] production, you all know, Mr. Kirk and Mr. King [20] can help you if you don't, how we do our [21] privilege logs in this district. It requires [22] you to be detailed. It requires you to have an [23] efficient privilege log.

[24] I'm going to try to shortcut it

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[1] for you have so we don't have a lot of back and [2] forth between you. If there are questions where [3] you challenge the assertion of a privilege, what [4] I think would be helpful is if each side in the [5] privilege log categorizes the nature of the [6] privilege. So in other words, section one would [7] be attorney/client, section two would be work [8] product, you know, whatever you have.

[9] And then if there is a challenge, [10] how I'm going to resolve it is in the categories [11] of the privilege log, section one or part one, [12] part two, I'll allow the challenging side to [13] make a random selection of a percentage number [14] of documents that I'll review in camera rather [15] quickly and how that turns out will determine [16] how your privilege log — I mean how your [17] privilege assertion is going to fair in this [18] particular piece of litigation.

[19] So do your privilege logs [20] according to the detail we use here, except [21]

break them out in parts by the nature of the [22] privilege. If you have a dispute, all you have [23] to do, you know, I'm going to hear it in camera, [24] pick out what it is, the part that you think

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[1] that they have been insincere about and then all [2] I'll need to give you is the number of documents [3] that you're going to require them or I'm going [4] to require them to produce randomly so I can do [5] an in camera review.

[6] Are there any questions, Mr. Kirk [7] or Mr. King? Okay.

[8] And that will get us through I [9] think the bulk of what typically comes up in [10] document issue and get us ready for depositions [11] to start up in March.

[12] **MS. GABLER:** When do you want the [13] privilege log disputes flagged for Your Honor?

[14] **THE COURT:** That probably won't be [15] able to be done by March 1 unless you tell me [16] you can, because of translation and everything [17] else, so I would be okay with it if the [18] objections or the challenges to the logs were [19] here a week later, by March 8, because I expect [20] to get them done in a week or so for you.

[21] **MS. GABLER:** And the logs [22] themselves on the 21st?

[23] **THE COURT:** Yes. Does that work [24] for both of you?

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[1] **MR. BONO:** Can we have just a few [2] extra days after the production to have a log [3] done, do you have a problem with that, maybe the [4] 24th, something like that?

[5] **THE COURT:** Logs will be exchanged [6] on the 24th. And any challenges by the 8th of [7] March. And then local counsel will E-mail me [8] that you need — if there is a challenge you [9] need the number to be produced of random [10] documents and if necessary a date for a hearing, [11] but you just put that in the E-mail under the [12] discovery dispute procedure and we'll get you [13] in. That's all the things, items that I have [14] listed.

[15] **MR. BONO:** Your Honor, in light of [16] Your Honor's ruling, I guess on the specifics of [17] the document issue, I think it would be best for [18] the parties to discuss it over the next week, I [19] have some points, but I'll discuss it with [20] counsel and she'll be discussing things with me [21] as we work over the next ten days.

[22] I do have one other thing, Your [23] Honor, in terms of scheduling. This was Markman [24] hearing, we did reach an agreement leading up to

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[1] the hearing consistent with the Court's order [2] and I wanted to propose it to make sure Your [3] Honor was okay with it.

[4] Your Honor, and if I get the dates [5] wrong, let me know, Julie, but I think I have [6] it.

[7] **MS. GABLER:** Can I interrupt you [8] before you proceed with the dates?

[9] Given that we have now extended [10] out both interrogatory responses and document [11] requests, I think we would like to ask that we [12] move back the Markman date so that all of that [13] is done and those documents are available for [14] expert consideration before the Markman hearing.

[15] **THE COURT:** In this case, and I [16] don't have it with me, you have Markman, then [17] you have your expert reports due; right?

[18] **MS. GABLER:** Yes.

[19] **MR. BONO:** Yes, Your Honor.

[20] **THE COURT:** So go ahead, I know [21] what you're saying, an expert for the Markman [22] hearing.

[23] **MS. GABLER:** Well, right now under [24] the current schedule, the expert reports

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[1] actually trail the Markman hearing by about [2] three weeks in essence.

[3] **THE COURT:** My goal is to get you [4] to construction so your experts have it when [5] they do their opinions on the patent issues in [6] the case.

[7] **MS. GABLER:** Right. So that's the [8] right — we don't disagree with that order, but [9] the concern is that now that we've moved [10] document production and interrogatory dates [11] under the schedule that Mr. Bono would be [12] providing you in a moment, we would be having [13] opening briefs exchange before the date we just [14] agreed on for the privilege log and two days [15] after the drop dead date on the documents, and

[17] **THE COURT:** What was your hearing [18] date?

[19] **MS. GABLER:** March 6th, and you [20] have —

[21] **THE COURT:** I think I saw that [22] somewhere.

[23] **MS. GABLER:** And that all briefing [24] was done by March 1, so while we have a number

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[1] of dates in Mr. Bono's proposal about when we [2] were going to exchange disputed terms and [3] definitions and things like that, given that we [4] have

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now moved these document interrogatory [5] dates by three weeks, I think that should be [6] accounted for in the Markman schedule, so those [7] are now pushed back so those items are done and [8] the interrogatory responses and the documents [9] have been produced before more than two days [10] before we're submitting opening briefs in [11] Markman.

[12] **MR. BONO:** Your Honor, I don't [13] have a disagreement with this, but obviously [14] it's the Court's schedule that is most [15] important.

[16] **THE COURT:** Here is what I'm going [17] to do. Except for — my concern is adult spring [18] break, and if any of you have children, [19] children's spring break. I think adult spring [20] break for me is March 9th, 10th, 11th, 12th, [21] 13th, 14th and 15th.

[22] **MS. GABLER:** For me it's the last [23] week of March.

[24] **THE COURT:** The last week of

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[1] March? So you have them committed to memory.

[2] **MR. BONO:** Your Honor, I just have [3] the Friday the 24th and Monday the 27th, which I [4] have blocked out my related children's spring [5] break.

[6] **THE COURT:** Okay. There you go. [7] So it's important to know that.

[8] **MR. BONO:** I'm visiting my [9] daughter for parents weekend.

[10] **THE COURT:** So let's take out the [11] 9th, 10th, 11th, 13th, 14th, 15th of March, that [12] takes out the 24th, and then the week of the [13] 27th.

[14] **MS. GABLER:** It's actually — [15] let's see here. Yes, that's right. Yes.

[16] **THE COURT:** That would be the last [17] week of March would be the 27th.

[18] **MS. GABLER:** Yes.

[19] **THE COURT:** And you pick any dates [20] you want for the Markman and the only thing [21] you'll be subject to is the time. In other [22] words, it may be late in the date, or early in [23] the day, but you can pick the date you want.

[24] **MR. BONO:** Your Honor, just

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[1] looking at everybody's schedule, what about [2] Monday the 20th, which would be a two-week [3] extension, does that work?

[4] **THE COURT:** That's fine with me.

[5] **MR. BONO:** That's way before.

[6] **MS. GABLER:** Can I —

[7] **MR. BONO:** There is no secrets [8] here. You can see my calendar.

[9] **THE COURT:** Here you go, now you

[10] get all the trade secrets out. Does he have the [11] hours that he's billing daily?

[12] **MS. GABLER:** No.

[13] **MR. BONO:** I didn't give her that.

[14] **THE COURT:** Just wondering.

[15] **MS. GABLER:** What I would actually [16] like to do, I couldn't have the — we can [17] certainly commit to presenting a joint [18] submission by the end of the week to Your Honor [19] about a date.

[20] **THE COURT:** We'll pick the 20th, [21] just to have a date as we leave here today, and [22] we'll put it on for four o'clock and if it's [23] inconvenient for her, you can change it by [24] agreement.

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[1] **MR. BONO:** That would be fine.

[2] **MS. GABLER:** So 3/20, 4:00 p.m. [3] right now.

[4] **MR. BONO:** 4:00 p.m.

[5] **THE COURT:** 4:00 p.m. I'm in a [6] bench trial with Forest Lab.

[7] **MR. BONO:** Your Honor, could the [8] Court —

[9] **THE COURT:** Mr. Kirk, is that [10] trial going to settle? I don't think it can.

[11] **MR. KIRK:** If I had to bet, I [12] would say it won't.

[13] **THE COURT:** So four o'clock.

[14] **MR. BONO:** Your Honor, since we [15] haven't talked to Ms. Dudsik, were there a [16] couple of other dates that would work for Your [17] Honor?

[18] **THE COURT:** Other than the ones [19] I've excluded, pick whatever one you want.

[20] **MR. BONO:** So if she doesn't do it [21] the 20th, the 21st would be acceptable to the [22] Court?

[23] **THE COURT:** Yes.

[24] **MR. BONO:** Thank you, Your Honor.

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[1] **THE COURT:** We'll go away with the [2] 20th at four o'clock. If she can't do the 20th, [3] you pick another date. The only thing you're [4] subjected to is the time of the day.

[5] **MS. GABLER:** Right, which will be [6] late in the day.

[7] **THE COURT:** Right, because I have [8] a lot of trials coming up.

[9] **MS. GABLER:** Do we already have a [10] clear understanding of amount of time per side?

[11] **THE COURT:** No, because I haven't [12] read your briefs. Do you think I do that [13] arbitrarily? I'm not sure if that was an insult [14] or not.

[15] **MS. GABLER:** It was not intended [16] to be.

[17] **THE COURT:** I really do, I take a [18]

quick look at the briefs and I don't restrict [19] the parties. If you want to have an expert, I [20] let you have an expert, but I set times, that's [21] the only way I can control, but I have to read [22] the briefs to see what the issues are and then I [23] give you have your allocation and I give you [24] your time.

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[1] Some people argue and put the [2] papers in, some folks bring a witness, but I'll [3] leave that to you. But I'll do it probably --- [4] see, I don't know what dates you're going to [5] have the briefs to me, but after I have a chance [6] to look at the briefs to see what you're [7] disputing and how detailed it is and what the — [8] I mean, this is — what is it, plasma screens?

[9] **MR. BONO:** Your Honor, it's LCD, [10] liquid crystal displays.

[11] **THE COURT:** So I'm pretty expert [12] in that.

[13] **MR. BONO:** I understand.

[14] **THE COURT:** I buy them.

[15] **MR. BONO:** That's right, we all [16] buy them.

[17] **THE COURT:** I love this war story. [18] When I was a very, very inexperienced judge, I [19] had a patent case with RCA about digital [20] generation on video screen and all these people [21] like the guy that started Data General, Dr. [22] Wang, came to testify, and I was new enough that [23] I didn't know what you weren't supposed to ask. [24] And with five children, we were buying our first

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[1] computer, so it was a bench trial so after [2] Dr. Wang testified since he appeared at the time [3] to be the most knowledgeable person about all [4] that stuff, I asked him, I said what computer [5] would you buy if you had five children. The [6] oldest was like in the fifth grade and, you [7] know, and he said, Judge, you have to have an [8] Apple 2E with the software and everything.

[9] So I went to the computer store, I [10] was the brightest store customer in the computer [11] store because they all wanted to help you back [12] in those days, this was like in '85 or '86, I [13] have pretty good authority what I'm buying here, [14] and you know what, that Apple 2E, my [15] grandchildren still are playing educational [16] software. It's that good. He's passed away, [17] Dr. Wang, but he obviously knew what was good [18] for that application. So as a customer [19] sometimes you can be pretty astute, I guess.

[20] Okay.

[21] **MR. BONO:** One other thing, the [22] scheduling on the Markman, assuming we do go on [23] the 20th, you had in your

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scheduling order, [24] originally you had the final briefing being

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[1] concluded on March 1st, which was the Wednesday [2] before the hearing on the 6th. Should we decide [3] that, or agree that March 15th, which is the [4] Wednesday before the Markman would be all [5] briefing would be concluded by that date.

[6] **THE COURT:** That's fine.

[7] **MR. BONO:** And if that's fine, [8] Your Honor, I would like to let the Court know [9] what we have agreed to. We will adjust the [10] dates accordingly because it's just a matter of [11] moving the dates back two weeks, but what the [12] parties have agreed to is we picked a date for [13] an exchange of terms that each side is proposing [14] would be subject to construction in the Markman [15] proceeding, then we have picked a subsequent [16] date in which each side was going to exchange [17] proposed definitions of the terms they're [18] proposing, and then a time for a meet and confer [19] to try to work, see if we can narrow the terms [20] and the definitions, and then an opening brief [21] that was about a week before the final brief in [22] the Court's order.

[23] And we've generally agreed with [24] that. And I just wanted to make sure that this

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[1] would be okay with the Court.

[2] **THE COURT:** Absolutely.

[3] **MR. BONO:** We are all geared up to [4] have all the briefing concluded and in accord [5] with the order.

[6] **THE COURT:** Absolutely. [7] Defendant, anything else?

[8] **MS. GABLER:** No, we agreed, it was [9] a negotiated schedule and that's an accurate [10] representation of how we have laid that out. So [11] once we get the — whether it's the 20th or a [12] different date, I don't anticipate we'll have [13] any problem reaching agreement on that adjusted [14] schedule.

[15] **THE COURT:** Okay. What I'll ask [16] you to do is somebody prepare an order, or do [17] you want me to just so order the transcript?

[18] You're going to get the [19] transcript. I'll just so order the transcript.

[20] **MR. BONO:** That would be [21] sufficient.

[22] **THE COURT:** I will send an order [23] that so orders the transcript that has the dates [24] and all other matters.

State of Delaware)
New Castle County)
CERTIFICATE OF REPORTER
I, Dale C Hawkins, Registered Merit
Reporter and Notary Public, do hereby certify that
the foregoing record, is a true and accurate
transcript of my stenographic notes taken on
February 8, 2006, in the above-captioned matter.
IN WITNESS WHEREOF, I have hereunto set my
hand and seal this 9th day of February, 2006, at
Wilmington

Dale C Hawkins, RMR
Cert No 112-RPR

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Thank you
(Hearing concluded at 1:20 p.m.)

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